

i))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 191 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THAKORKRISHNA RANCHHODJI SHAH

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR KC SHAH for appellant.

MR MD PANDYA for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/02/2000

ORAL JUDGEMENT

Being aggrieved by the judgment and decree passed by the then learned District Judge at Bharuch, in Regular Civil Appeal No. 63 of 1980 whereby the appeal came to be allowed reversing the decree passed by the then learned Civil Judge (J.D.) at Ankleshwar in Regular Civil Suit No. 82 of 1974, and directing the present appellant to pay the sum of Rs. 1,345=11 ps. with interest at the rate of 6% p.a. from the date of the suit till realisation to the present respondent, the appellant (original-defendant) has filed this Second Appeal.

2. The facts, leading the present appellant, to

prefer the appeal may in brief be stated. The appellant who is having the agricultural land within the Sim of Village Jhaghadia, applied for the electric energy for running the motor installed at the Well so that he can fetch the water and irrigate the field. The respondent Board agreed to supply the electricity relating to which an agreement between the two came to be entered into. As per the agreement, the present appellant agreed to pay minimum charges at the rate of Rs. 262.50 p.s. per year for a period of 7 years irrespective of the consumption of the energy. The appellant some times after the commencement of supply of energy to him failed to make the payment of the minimum charges and disregarded his contractual obligation. In all Rs. 1,345=11 ps. became due relating to the period April 1971 to April 1974. Though demand was made often, the appellant ignoring the same avoided to make the payment. At last, the respondent was constrained to issue the notice. Despite the notice, the appellant failed to make the payment. The respondent then filed Regular Civil Suit No. 82 of 1974 in the Court of the Civil Judge (J.D.) at Ankleshwar for the recovery of the amounts due.

3. The appellant appeared before the lower Court after being served with the summons. He filed his Written Statement at Ex.10. Accepting the case about the agreement having been entered into he denied his liability to pay the minimum charges. The demand of the respondent was according to him illegal. He further inter alia contended that in the year 1969-70 there was heavy flood in the river Narmada. Due to the flood the underground currents of the water changed the direction, as a result the water was not flowing into the Well as a result the Well was being dried up gradually. At last for want of water the Well became dry. It was hence futile for him to run the motor and consume electrical energy. Because of such act of God, i.e., Vismajor the contract could not be enforced against him as the same had become null and void in view of Section 56 of the Indian Contract Act. In short, the appellant came out with the case that the contract entered into was frustrated because of the act of God making him helpless qua consumption of energy. In view of his such inability beyond his control, he was not at all liable to pay the amount claimed. The then learned Civil Judge (JD) dismissed the suit filed by the respondent. Consequently, Regular Civil Appeal No. 63/80 was filed in the Court of the District Judge at Bharuch which came to be allowed on 17th October 1980 and decree as prayed for came to be passed. It is against that judgment and decree, this Second Appeal is preferred before this

Court.

4. Mr. K.C. Shah, the learned advocate for the appellant contends that the learned District Judge was not at all right in passing the decree because the contract was frustrated as the Well gradually became dry because percolation of the water, after the flood was not possible as the water flowing beneath the earth had changed the direction.

5. The only question that is raised for consideration of this Court is whether the appellant is still under the contractual obligation to make the payment of the minimum charges regardless of the fact that it was impossible for him to consume the electric energy though he sincerely desired because his Well after 1969 became dry as water was not flowing into it. When the agreement in question is perused, it becomes abundantly clear that the appellant applied for the electric energy and entered into the agreement in question whereunder he agreed to make the payment of the minimum charges for a period of 7 years of the connection taken for agricultural purpose. Under the contract, the respondent agreed to supply electricity laying the line spending huge amounts. Hence some specific terms are incorporated in the agreement. As per one of the terms of the contract if the appellant for whatever reason does not consume the energy or consumes less energy than minimum prescribed supplied even then he is bound to make the payment of the minimum charges. The business of electric supply is regulated under the Indian Electricity Act. As per Section 22 of the Electricity Act, the consumer has to pay the minimum charges as prescribed. The minimum charges are linked up with the concept of a reasonable return on the capital expenditure and also to cover other standing charges incurred by the Electricity Board. In view of such term of the contract, regardless of his inability or helplessness to use the electric energy, the appellant is under contractual obligation to make the payment of minimum charges for a period of 7 years. However, when he avoided to pay, the respondent had to file the suit and obtain a decree. When the then learned Civil Judge (JD) erroneously dismissed the suit, the then learned District Judge in appeal was in view of the matter perfectly right in passing the decree reversing the decree passed by the learned Civil Judge (JD), holding that it was not open to the appellant to avoid the payment on the ground of frustration of contract as the said plea was not available to him. I have gone through the judgment delivered by the learned District Judge in appeal. I entirely agree with his

reasonings. When that is so, it is not necessary to restate all the reasons and conclusions he has drawn.

6. For the aforesaid reasons, there is no justifiable reason to upset the judgment and decree passed by the learned District Judge at Bharuch. The same are required to be maintained. In the result, the appeal being devoid of merits is liable to be dismissed, and is hereby dismissed accordingly with no order as to costs. Decree accordingly be drawn.

.....

(rmr).